

OFFICE OF THE ATTORNEY GENERAL

86-00137



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JAN 29 1986

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 261-7300

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
EXECUTIVE ASSISTANT

Honorable Ken Kvalheim
State Representative
421 Dogwood Drive
Mobile, Alabama 36609

Judges - District Attorneys -
Sentences - Weapons

Judges and District Attorneys may
legally nol-pros or plea bargain
cases, but should not do so to
circumvent the Firearm Felony Law
or the Habitual Offender Act.

Dear Mr. Kvalheim:

We have received your request for an opinion from this
office. Your questions are as follows:

"Is it legally permissible for a judge
and/or district attorney to either ignore
or circumvent via plea bargaining, etc. a
mandatory law such as the 20-year penalty
imposed for a felony committed with a
firearm? Or to reduce the charge and/or
nol-pros cases to avoid the habitual of-
fender act? Or to place a defendant on
'good behavior' and subsequently dismiss
or nol-pros an indictment? Or, to impose
the mandatory sentence, then suspend it?"

Honorable Ken Kvalheim
Page Two

Alabama's system of government allows for plea bargaining and nol-prossing of cases by judges and district attorneys. This is a realistic and necessary approach to cases in our criminal justice system. However, the spirit of the law would not be upheld if the plea bargaining or nol-prossing was done for the express purpose of ignoring or circumventing the Firearm Felony Law or the Habitual Offender Act.

The Attorney General has a firm belief in criminals being punished to the full extent of the law. This belief is evidenced by the support given to legislation to toughen penalties and close loopholes in the criminal code. Therefore, it is the opinion of this office that it is permissible for a district attorney or judge to nol-pros or plea bargain a case, but it should not be done to bypass the penalties set forth in the Firearm Felony Law or the Habitual Offender Act.

I hope this sufficiently answers your questions. If, however, we may be of further help, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By:

A handwritten signature in cursive script that reads "Alice Ann Boswell".

ALICE ANN BOSWELL
Assistant Attorney General

AAB:jla